of pages of documentation. AT&T compounds its folly by proposing that these voluminous filings also be served by *fax*. As U S WEST observed, "folly is not required as part of the 1996 Act."[52]

BellSouth suggests the following alternative, which recognizes and preserves the distinction between Section 271(d)(6)(B) complaint proceedings and Section 271(d)(6)(A) enforcement proceedings:

Day 0: Complaint, including all evidence on which complainant relies to make out a *prima facie* case, is filed with the Commission and hand-served on defendant at both its Washington office and headquarters.

Day 30: Answer, including all evidence on which defendant relies to rebut the allegations of complainant, is filed with the Commission and hand-served on complainant's counsel of record. This should include any affirmative defenses claimed by defendant, including all evidence on which defendant relies to support such affirmative defenses.

Day 45: Complainant's response to affirmative defenses, if any, together with all evidence on which defendant relies to rebut the affirmative defenses, is filed with the Commission and hand-served on defendant's counsel of record.

Day 90: Commission (or staff acting on delegated authority) issues a decision either dismissing the complaint or determining that the complainant has demonstrated a *prima facie* case warranting initiation of an enforcement proceeding.

If, at the conclusion of such a complaint proceeding, the Commission initiates an enforcement proceeding, it would then issue one or more procedural orders to govern the conduct of that proceeding, including discovery, live testimony (if any), and briefing, in light of the complexity of the particular issues to be decided. This would ensure that the defendant BOC is afforded due process of law, consistent with the direction of Congress that the BOC be afforded "notice and opportunity for a hearing." AT&T's proposed procedure, on the other hand, would not.

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52 U S WEST Comments at 7.

V. OTHER ISSUES (*NPRM* ¶¶ 37, 41-47, 54)

A. InterLATA Information Services

BellSouth disagrees vigorously with AT&T's and Sprint's interpretation of when an information service should be deemed an interLATA service. They claim that a BOC is providing an interLATA information service "whenever interLATA transmission or interLATA access is a component of the service."[53] Thus, AT&T and Sprint would classify an information service as interLATA if any interLATA facilities are involved.[54]

This interpretation cannot be sustained. The AT&T-Sprint view would effectively convert virtually all information services into interLATA information services. The statutory definition of "information service" entails the provision of access to information "via telecommunications."[55] BellSouth agrees with Bell Atlantic's analysis:

> So long as an interexchange carrier, not the BOC, performs the interLATA transmission of the subscriber's communication, those BOC services have not been, and should not now be, classified as interLATA. It would be inconsistent with Congressional intent, and with the public interest, for the Commission to attempt to sweep existing enhanced service offerings, such as telemessaging services, into the separate subsidiary requirements applicable to interLATA information services. . . . Such services are not properly classified as interLATA . . . unless the BOC itself provides the interLATA transmission to the customer of the information service.[56]

Similarly, a service does not become an interLATA information service solely by the utilization of interLATA links to support a service. Where BOC interLATA facilities are used to provide access to centralized databases and/or processors, the nature of the interLATA transport

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53 AT&T Comments at 13; *accord* Sprint Comments at 16, 18.

54 AT&T Comments at 14; *accord* MCI Comments at 18.

55 47 U.S.C. § 153(41).

56 Bell Atlantic Comments, Ex. 1 at 4-5.

does not involve "telecommunications" and thus does not require classifying the information service as an interLATA information service. Again, BellSouth agrees with Bell Atlantic's analysis:

> The definition of an information service as intraLATA should not change if the BOC locates a non-transmission database or processor in another LATA. Such arrangements are considered incidental intraLATA services, which, under the Act, are not subject to the separate subsidiary requirements. BOCs, like their competitors, should be able to structure a service in the most operationally efficient manner without converting the service into an interLATA offering.[57]

Any alternative interpretation would impose severe constraints on a BOC's ability to efficiently develop its network architecture. Such a penalty would severely hamper the BOC's ability to meet the service needs of end users and invoke competitive restrictions which were not contemplated by Congress. Only through the interpretation presented by Bell Atlantic will the competitive opportunities envisioned by Congress in the area of information services be made available to the public.

In contrast to MFS's pleading that suggests a broad interpretation of the term, the Commission has supported a narrow definition of an "interLATA information service," as evidenced by previous Commission and Bureau rulings. As recently as June, the Common Carrier Bureau approved a CEI plan submitted by Bell Atlantic for Internet access that used unaffiliated IXCs for interLATA transport.[58] While non-BOC Internet Service Providers ("ISPs") are free to use their own facilities for interLATA transport as part of their Internet offerings, Bell Atlantic not only uses other IXCs for this function, it employs an "equal access" mechanism by which the customer chooses an interLATA ISP to complete its internet connection.

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[57] Bell Atlantic Comments, Exhibit 1 at 5 (footnote omitted).

[58] *Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Providers of Internet Access Service,* No. CCBPol 96-09, DA 96-891 (Com. Car. Bur. June 6, 1996), *recon. pending.*

B. Incidental InterLATA Services

Section 272(a)(2)(B)(i) expressly states that incidental interLATA services, other than those described in Section 271(g)(4), are completely exempt from the separate affiliate requirement. Nevertheless, AT&T argues that the Commission should apply "the nondiscrimination obligations of Sections 272(c) and 272(e) . . . to a BOC's integrated provision of incidental interLATA services."[59] Similarly, MCI argues that a "BOC must make available to all carriers the same network elements, facilities and services used in providing its own incidental services on an unbundled basis and at the same rates, terms, and conditions."[60] These demands for restraints on BOC activities expressly authorized by the statute should be summarily rejected.

Congress expressly considered which BOC activities should be subject to Section 272(c). It decided that the nondiscrimination safeguards in that section should apply only to a BOC's "dealings with its affiliate described in subsection (a)"—an affiliate that was *not* required for the provision of five of the six enumerated incidental interLATA services. Section 272(c) has no application whatsoever to a BOC's integrated provision of authorized incidental interLATA services. If Congress had contemplated applying these safeguards to such services, it surely would have stated so expressly, as it did for the affiliate in Section 272(c). The fact that Congress allowed these services to be provided by a BOC without the separate affiliate addressed by Section 272(c) speaks for itself.

Similarly, Congress expressly considered which BOC activities should be subject to Section 272(e). Each subsection specifically states whether its nondiscrimination requirement applies with respect to the BOC's dealings with itself or with an affiliate. Subsection (1) requires nondiscrimina-

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59 AT&T Comments at 11.

60 MCI Comments at 11-12.

tion with respect to certain services that it provides "to itself or to its affiliates,"[61] and subsection (3) prohibits certain specified discrimination in favor of "the affiliate described in subsection (a), or . . . itself."[62] The nondiscrimination provisions in subsections (2) and (4), however, are expressly limited to the services and facilities provided by the BOC "to the affiliate described in subsection (a)" and "its interLATA affiliate," respectively.[63] Thus, Congress considered whether the nondiscrimination safeguards in subsections (2) and (4) should apply to the BOC's integrated provision of incidental interLATA services and decided that they should not. The Commission is not free to rewrite the statute as AT&T urges.

In fact, AT&T's and MCI's proposed nondiscrimination requirement is inconsistent with the entire structure of Section 272. Congress expressly decided to permit the BOCs to offer incidental interLATA services without use of a separate affiliate. By definition, all of the incidental interLATA services are interLATA, and they therefore include interLATA transport. If the BOCs were required, as AT&T and MCI suggest, to unbundle their incidental interLATA services, they would have to offer any interLATA transport capabilities that are components of the incidental services to others on a nondiscriminatory basis. The BOCs are, however, prohibited from offering non-incidental interLATA telecommunications services in-region, except through a separate affiliate, during the initial three-year period after satisfying the Section 271 checklist. Before satisfying the checklist, they cannot provide such services at all. Thus, they *cannot*, under the statute, provide nondiscriminatory access to unbundled interLATA services that are components of a permissible incidental interLATA service.

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61 47 U.S.C. § 272(e)(1).

62 47 U.S.C. § 272(e)(3).

63 47 U.S.C. § 272(e)(2), (4).

CONCLUSION

For the reasons stated above and in BellSouth's Comments, the Commission should not adopt non-accounting rules purporting to implement Section 272. The statute is a carefully balanced scheme that comprehensively states what non-accounting safeguards are required. Congress did not authorize the Commission to supplement the provisions of the statute. Imposing restraints on the BOCs beyond what Congress required will disrupt the transition to a fully competitive telecommunications environment and will deprive consumers of considerable benefits.

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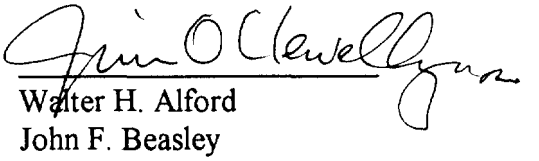
By: 

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August 30, 1996

CERTIFICATE OF SERVICE

I, Phyllis Martin, hereby certify that copies of the foregoing Reply Comments of BellSouth in CC Docket 96-149 were served via first class U.S. mail, postage prepaid, this 30th day of August, 1996, to the parties on the attached list.

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